



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

11201 Renner Boulevard  
Lenexa, Kansas 66219

JUL 01 2013

Harry D. Hansen  
President  
U-Pick-It, Inc.  
5705 S 60th St #105  
Omaha, Nebraska 68117

Re: U.S. EPA Violations at 7700 E. Winner Rd, Kansas City, MO 64125

Dear Mr. Hansen:

On February 9<sup>th</sup> and 10<sup>th</sup>, 2012, representatives from the U.S. Environmental Protection Agency, Region 7 conducted an inspection at the facility located at 7700 E. Winner Rd, Kansas City, MO 64125, operated by U-Pick-It, Inc. The inspection was undertaken to determine U-Pick-It's compliance with the requirements of the Resource Conservation and Recovery Act of 1976, as amended. A copy of the inspection report has been previously provided to you on March 21, 2012. Based on our review of information gathered during this inspection, violations of RCRA and underlying regulations have been documented.

During the February 2012 RCRA inspection, the EPA inspector noticed possible violations of the Federal Water Pollution Control Act ("Clean Water Act" or CWA). Because of these observations, the RCRA inspection was followed up with an EPA CWA inspection of this facility on December 19<sup>th</sup> and 21<sup>st</sup>, 2012. Based on the results of the CWA inspection, the EPA determined that the facility was not in compliance with the requirements of the National Pollutant Discharge Elimination System stormwater permit and the CWA stormwater requirements as set forth in Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Additionally, as you are aware, U-Pick-It, Inc. is currently engaged in negotiations with the EPA for possible violations of federal regulations, found at 40 C.F.R. Part 761 promulgated pursuant to Section 6 of the Toxic Substances Control Act, 15 U.S.C. § 2605(e). These regulations address the manufacture, processing, use, distribution in commerce, disposal, storage, marking and notification and manifesting of polychlorinated biphenyls.

Violations of RCRA

Violations of RCRA observed at the facility included failure to make hazardous waste determinations, in violation of Missouri Title 10 CSR 25-5.262(1) referencing 40 CFR 262.11.

Based on information currently available to the EPA, a proposed penalty of \$53,400 has been calculated for the RCRA hazardous waste determination violations identified at the facility. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA. This figure has been adjusted upward for inflation pursuant to the 2008 Civil Monetary Penalty Inflation Adjustment Rule which amends 40 C.F.R. Part 19, so that penalties of

RCRA



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up to \$37,500 per day are now authorized for violations of Subchapter III of RCRA that occur after January 12, 2009. Enclosed for your review are the EPA's proposed RCRA penalty calculation worksheet and a copy of the EPA's RCRA Penalty Policy.

#### Violations of the CWA

Based on the results of the inspections, the EPA determined that the facility was not in compliance with the requirements of the facility's National Pollutant Discharge Elimination System stormwater permit and the CWA stormwater requirements as set forth in Section 402(p) of the CWA, 33 U.S.C. § 1342(p). The principal violations discovered at the site are as follows:

- Discharge of stormwater associated with industrial activity without a permit;
- Failure to provide training, as required by the Missouri NPDES General Operating Permit Requirements;
- Failure to clean up spills within 24 hours, as required by the Missouri NPDES General Operating Permit Requirements;
- Failure to report spills within 24 hours, as required by the Missouri NPDES General Operating Permit Requirements;
- Failure to remove batteries, fluids and fuels, as required by the Missouri NPDES General Operating Permit Requirements;
- Failure to mark outfalls, as required by the Missouri NPDES General Operating Permit Requirements; and
- Failure to submit an annual operating report, as required by the Missouri NPDES General Operating Permit Requirements.

Based on information currently available to the EPA, a proposed penalty of \$104,598 has been calculated for the CWA violations identified at the facility.

#### Violations of TSCA

As stated, U-Pick-It is currently engaged in negotiations regarding the remediation of polychlorinated biphenyls at this site and penalties resulting from any violations of TSCA regulations related to the handling or release of polychlorinated biphenyls at this location.

#### 60-Day Pre-Filing Negotiations

While the EPA believes it is appropriate to proceed with a formal enforcement action, we also recognize that settlement of this matter may be better accomplished by conducting negotiations prior to the filing of a complaint. By this letter we are offering you the opportunity to negotiate a resolution of the proposed penalty before the complaint is filed. The settlement of this matter through payment of a civil penalty and any injunctive relief must be memorialized in a Consent Agreement and Final Order to be signed by you and the EPA within the 60-day period. As part of these pre-filing negotiations, the EPA will consider any additional information that you have that is relevant to the penalty or violations. If you are interested in participating in pre-filing negotiations, please contact me, within **14 calendar days** of your receipt of this letter. I can be contacted at (913) 551-7501. If you choose not to participate in pre-filing negotiations, do not contact the EPA within the 14-day time period, or settlement is not reached within the 60-day pre-filing time period, the EPA intends to proceed with the filing of an administrative complaint.

Ability To Pay

If you believe you do not have the financial ability to pay the EPA's proposed penalty and want the EPA to consider your financial condition, you will need to provide the EPA with appropriate financial documentation to substantiate your claim **within the first 30 days** of the 60-day pre-filing negotiations period. Such documentation will include three years of signed federal income tax returns and audited financial statements, and a completed EPA financial ability to pay form which can be provided to you upon request.

Supplemental Environmental Projects

You may also wish to consider mitigating a portion of the penalty by performing a Supplemental Environmental Project. A Supplemental Environmental Project is a project purchased or performed by a violator that provides significant environmental benefits and has a nexus to the environmental harm threatened or caused by the violations. A full description of the EPA's policy concerning the use of Supplemental Environmental Projects in settlement actions can be found on the EPA's website at <http://www.epa.gov/compliance/civil/seps/index.html>.

As indicated above, the EPA has determined that there are serious violations of the RCRA, the CWA and TSCA at the U-Pick-It, Inc. facility that warrant the assessment of a civil penalty. However, the EPA is committed to working with you to resolve this matter and believes that pre-filing negotiations offer all parties an opportunity to reach settlement without protracted litigation. Your immediate attention to this matter is greatly appreciated. If you have any questions, please do not hesitate to contact me at (913) 551-7501.

Sincerely,



Raymond C. Bosch  
Assistant Regional Counsel

Enclosures: Proposed Penalty Calculation Worksheet  
RCRA Civil Penalty Policy

cc: Robert F. Peterson, Esq.  
Paul Dickerson, MDNR (w/o enclosures)  
Andrea Collier, MDNR (w/o enclosures)  
Nicole Eby, MDNR (w/o enclosures)

### RCRA PENALTY CALCULATION WORKSHEET

<u>Penalty Computation Worksheet</u>	
Company Name: U-Pick-It Address: 7700 E. Winner Road, Kansas City, Missouri 66103	
Count 1: Title 10 Code of State Regulations (CSR) 25-5.262(1) incorporating Title 40 Code of Federal Regulations (CFR) 262.11- Failure to make a hazardous waste determination on the following: <ol style="list-style-type: none"> <li>1. Mercury switches and ampoules</li> <li>2. Spent lamps</li> <li>3. Gasoline in the secondary containment</li> </ol>	
Penalty Amount for Count 1	
1. Gravity Based Matrix Value (value from Matrix Table) <ul style="list-style-type: none"> <li>- Mercury Switches and ampoules               <ul style="list-style-type: none"> <li>a. Potential for Harm: moderate</li> <li>b. Extent of Deviation: major</li> <li>c. Cell Placement: 75% of the cell</li> </ul> </li> <li>- Waste Gasoline:               <ul style="list-style-type: none"> <li>a. Potential for Harm: major</li> <li>b. Extent of Deviation: major</li> <li>c. Cell Placement: 75% of the cell</li> </ul> </li> <li>- Spent Lamps:               <ul style="list-style-type: none"> <li>a. Potential for Harm: minor</li> <li>b. Extent of Deviation: major</li> <li>c. Cell Placement: 75% of the cell</li> </ul> </li> </ul>	\$14,517.50  \$35,207.50  \$3,720
2. Multi-day/Multiple Occurrence Component for Count 1 <ul style="list-style-type: none"> <li>- Accounted for within the Gravity Calculations</li> </ul>	N/A
Initial Penalty Total	\$53,445
Rounded Initial Penalty Total	\$53,400
3. Adjustment Factors (+/- 25 % adjustment allowed on each factor)	
a. Good Faith	0%
b. Willfulness/Negligence	0%
c. History of Noncompliance	0%
% Amount of Penalty Adjustment	0%
\$ Amount of Penalty Adjustment	\$0
4. Economic Benefit	\$0
Penalty Amount for Count 1	\$53,400
Total Penalty Amount for Complaint	\$53,400

**Count 1:** Title 10 Code of State Regulations (CSR) 25-5.262(1) incorporating Title 40 Code of Federal Regulations (CFR) 262.11- Failure to make a hazardous waste determination on the following:

1. Mercury switches and ampoules
2. Spent lamps
3. Gasoline in the secondary containment